



Kristy D. Clark
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VIA UPS OVERNIGHT MAIL

January 4, 2011

Ms. Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

***Re: STB Docket No. AB-6 (Sub-No. 473X); BNSF Railway Company –
Abandonment Exemption – in Rolette and Towner Counties, North Dakota***

Dear Ms. Rutson:

Please reference BNSF Railway Company's Environmental and Historic Reports filed with the Board on December 6, 2010, in the above-referenced docket. Enclosed is an additional reply that we received after the filing of our reports.

Sincerely,

A handwritten signature in black ink that reads "Kristy Clark". The signature is fluid and cursive, with the first name "Kristy" and last name "Clark" clearly distinguishable.

Kristy D. Clark
General Attorney

Enclosures

KDC/js



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



DEC 15 2010

Mr. John A. Sims, Paralegal
Law Department
BNSF Railway Company
2500 Lou Menk Drive – AOB-3
Fort Worth, Texas 76131-2828

Re: STB Docket No. AB-6 (Sub-No.473X)
BNSF Railway Company – Abandonment
Exemption – Rolette and Towner Counties,
North Dakota

Dear Mr. Sims:

This is in response to your November 15, 2010, letter regarding a proposed railroad abandonment project located in Rolette and Towner Counties, North Dakota. BNSF Railway Company (BNSF) proposes to abandon their railway line between Milepost 30.00, north of Bisbee, and ending at the end of the line at Milepost 47.75, in Rolla. The proposed abandonment will include the removal of rails, ties, and bridges; however, railroad right of way, ballast, and culverts will remain in place so as not to alter prevailing waterflows along the line.

We offer the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) (MBTA), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) (NEPA), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250) (BGEPA), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA), and the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57).

Threatened and Endangered Species

If a Federal agency, in this case the Surface Transportation Board (STB), authorizes, funds, or carries out a proposed action, the responsible Federal agency, or its designated agent, is required to evaluate whether the action "may affect" listed species. If the Federal agency determines the action "may affect, is likely to adversely affect" listed species or designated critical habitat, then the responsible Federal agency shall request formal section 7 consultation with this office, or work with this office to remove the likely adverse effects before proceeding. If the evaluation shows a "no effect" determination on listed species or designated critical habitat, further

consultation is not necessary. If a non-Federal entity receives Federal funding for an activity, or if a Federal permit or license is required, the Federal funding, licensing, or permitting agency may designate the fund recipient or permittee as its agent for purposes of informal section 7 consultation. The funding, permitting, or licensing Federal agency is responsible to ensure that its actions comply with the ESA, including obtaining concurrence from the U.S. Fish and Wildlife Service (Service) for any action that may affect a threatened or endangered species or designated critical habitat prior to carrying out the activity.

A list of federally endangered and threatened species that may be present within the proposed project's area of influence is enclosed. This list fulfills requirements of the Service under Section 7 of the ESA. This list remains valid for 90 days. The STB or designated non-Federal agent should make a determination of the proposed projects' effects on listed species and designated critical habitat. This determination may be included in the environmental report. It should state whether or not the STB plans to incorporate the Service's recommendations to avoid and minimize any adverse effects. If the STB does not plan to take the recommended measures, the document should explain why not.

While STB or their designated agent should perform their own determination of the potential impacts of the proposed projects on federally listed species, from the information provided, the Service is not aware of federally listed species in the proposed project area.

High Value Habitat Avoidance

As part of the National Wildlife Refuge System, the Service administers fee title Refuge and Waterfowl Production Areas, as well as wetland and grassland easements throughout North Dakota. A review of our county plat maps indicates Service property interests are located in or near the project area (photocopies enclosed with fee title WPA's highlighted in green, wetland easements highlighted in yellow, and FMHA easements in purple).

The Service recommends that all property interests within the National Wildlife Refuge System be avoided during project construction, when possible. Special Use or right-of-way permits will be necessary for construction affecting property interests administered by the Service. The issuance of Special Use or right-of-way permits is subject to the final determination of a refuge compatibility review process. This determination may add some time to the review process, so early coordination with the district is important. For easements in Rolette County, please contact Gary Erickson, Wildlife Refuge Manager, J. Clark Salyer National Wildlife Refuge, 681 Salyer Road, Upham, North Dakota 58789-0066; phone: (701)768-2548; email: gary_erickson@fws.gov.

Cultural resource compliance requires coordination with the Zone Archeologist early in the NEPA process. Cultural Resource field investigations on Service easements and fee lands require a permit issued by the Zone Archeologist. Contact Barry G. Williams, USFWS Dakotas Zone Archeologist (barry_williams@fws.gov, 701-355-8577).

Service review of the National Wetland Inventory (NWI) maps and photographs indicate that a number of wetland basins lie adjacent to the proposed abandonment. You may access the NWI data directly through their website (wetlands.fws.gov). To minimize disturbance to fish and wildlife habitat in the project area, the Service provides the following recommendations:

- Install and maintain appropriate erosion control measures to reduce sediment transport to and water quality degradation of wetlands and streams near the project area.
- Make no stream alterations or changes in drainage patterns.
- Defer the timing of abandonment related construction activities to late summer (after July 15) or fall so as not to disrupt waterfowl or other wildlife during the nesting season and to avoid high water conditions.
- Reseed disturbed areas with a mixture of native grasses and forbs.

Thank you for the opportunity to comment on this project. If you require further information or the project plans change, please contact me or Breanne Vander Naald of my staff at (701) 250-4481 or at the letterhead address.

Sincerely,



Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosures

cc: ARD, Refuges, FWS, Denver, MS 60130
(Attn: Ella Denmon)
Project Leader, J. Clark Salyer WMD
(Attn: Gary Erickson)
Dakotas Zone Archeologist, Bismarck
(Attn: B. Williams)
ND Game & Fish Department, Bismarck
(Attn: Paul Schadewald)

FEDERAL ENDANGERED AND CANDIDATE SPECIES
FOUND IN
ROLETTE COUNTY, NORTH DAKOTA
December 2010

ENDANGERED SPECIES

Birds

Whooping crane (Grus Americana): Aransas-Wood Buffalo Population (264 birds) occurs in North Dakota counties during spring and fall migration between breeding and wintering areas. Whooping cranes prefer to roost overnight in shallow open water wetland habitat with good visibility during migration stopovers.

Mammals

Gray wolf (Canis lupus): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

CANDIDATE SPECIES

Birds

Sprague's Pipit (Anthus spragueii): Nests in native and planted grassland. Prefers patches of grassland at least 72 acres (29 hectares).

Invertebrates

Dakota skipper (Hesperia dacotae): Found in native prairie containing a high diversity of wildflowers and grasses. Habitat includes two prairie types: 1) low (wet) prairie dominated by bluestem grasses, wood lily, harebell, and smooth camas; 2) upland (dry) prairie on ridges and hillsides dominated by bluestem grasses, needlegrass, pale purple and upright coneflowers and blanketflower.

FEDERAL ENDANGERED AND CANDIDATE SPECIES
FOUND IN
TOWNER COUNTY, NORTH DAKOTA
December 2010

ENDANGERED SPECIES

Birds

Whooping crane (Grus Americana): Aransas-Wood Buffalo Population (264 birds) occurs in North Dakota counties during spring and fall migration between breeding and wintering areas. Whooping cranes prefer to roost overnight in shallow open water wetland habitat with good visibility during migration stopovers.

Mammals

Gray wolf (Canis lupus): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

CANDIDATE SPECIES

Birds

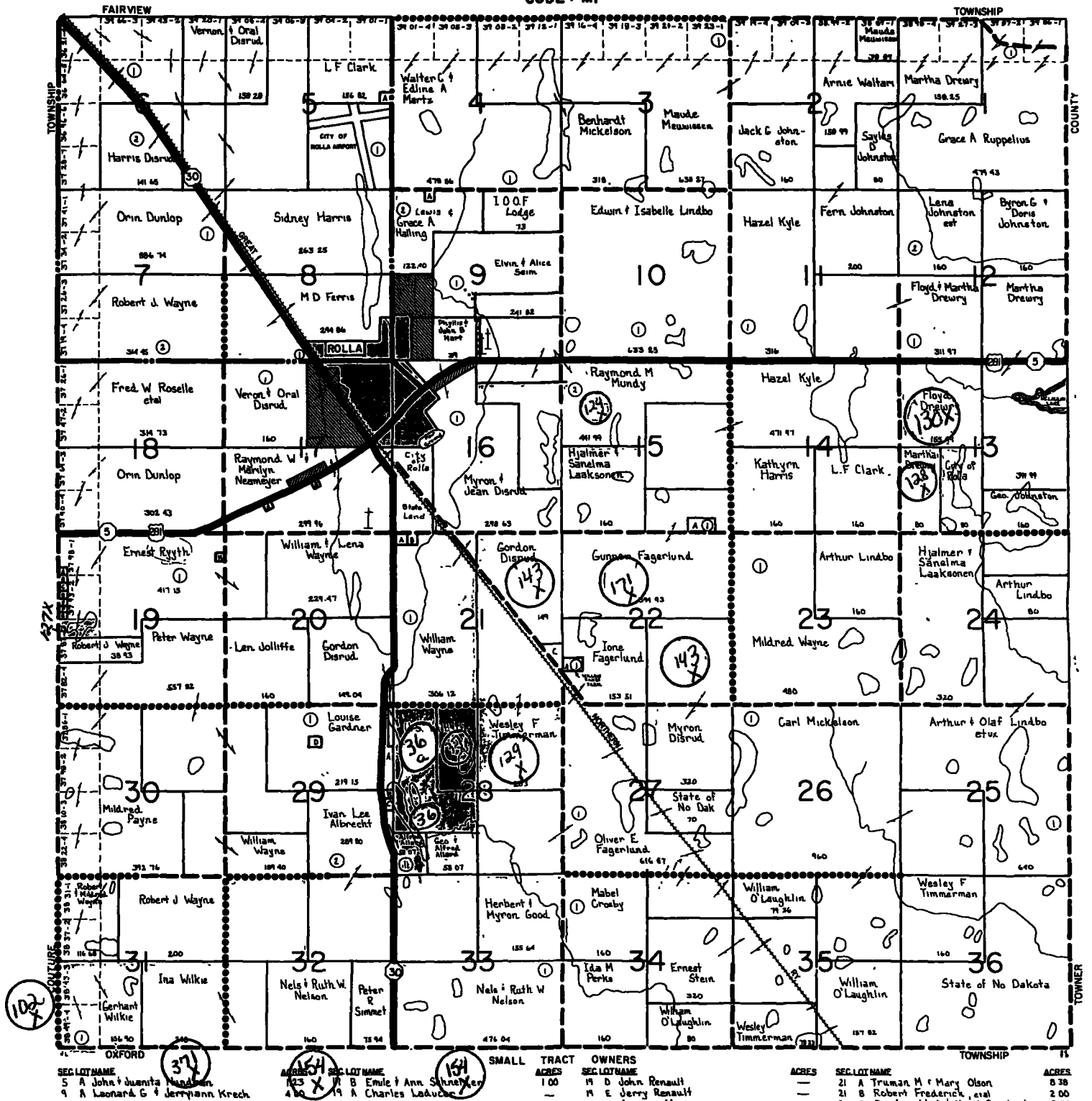
Sprague's Pipit (Anthus spragueii): Nests in native and planted grassland. Prefers patches of grassland at least 72 acres (29 hectares).

MT. PLEASANT

TOWNSHIP : 162 N.

RANGE : 69 W.

CODE : MP



SEC. LOT NAME
5 A John & Juanita Madsen
9 A Leonard G. & Jerryann Krech

SEC. LOT NAME
123 B Emile & Ann Shneyder
19 A Charles Laduc

SMALL TRACT OWNERS
ACRES
1.00
19 D John Renault
19 E Jerry Renault

TOWNSHIP
ACRES
21 A Truman M. & Mary Olson 8.38
21 B Robert Frederick, et al 2.00

OXFORD

TOWNSHIP - 161 N.

RANGE : 69 W.

CODE : OX

